**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

Income Tax Appeal No. 41 of 2005

Sedco Forex International Drilling Inc. as agent of its employee Mr. Barry Clossen a company incorporated in Republic of Panama having its registered office at no. 8, Acquitino de la Guardia Street, City of Panama, Republic of Panama, present address, C/o A.F. Ferguson & Co. Maker Towers, Cuffe Parade, Mumbai.

……Appellant

Versus

1. The Commissioner of Income Tax, Dehradun having office at Subhash Road, Dehradun.

2. The Deputy Commissioner of Income Tax, Special Circle, Dehradun, having its office at Subhash Road, Dehradun.

……..Respondents

**Hon'ble M.M. Ghildiyal, J.**
**Hon'ble B.S. Verma, J.:**

Heard Ms. Menka Tripathi, learned counsel for the appellant and Sri S.K. Posti, learned standing counsel for respondent.

Appellant has preferred this appeal against the order passed by Income Tax Appellate Tribunal, New Delhi dated 29.10.2004 rejecting the claim in respect of exemption from double taxation of the appellant for the assessment year 1998-99 and holding that off period salary is liable to be taxed in India.

Two questions have risen for decision, which are as under:

*Whether on the facts and circumstances of the case the Tribunal erred in law holding that the exemption under Article 16 of DTAA between India and Canada was not available to the appellate technician?*

*Whether on the facts and circumstances of the case the Tribunal erred in law for holding off period salary was taxable in India under Section 19 (1) (ii) of the Income Tax Act?*

The first question has already been decided by this court vide its judgement and order dated 22.07.2005 passed in Income Tax Appeal No. 165 of 2001 (Sedco Forex International Inc. Vs. The Commissioner of Income Tax, Dehradun and another) and court answered the question in negative i.e. in favour of the Department and against the appellant. The second question has been decided by Hon'ble Apex Court reported in JT 2005 (9) SC 639 (Sedco Forex International Drill Inc. and others Vs. Commissioner of Income Tax, Dehradun and Anr.) as such, the answer is in favour of assessee / appellate and against the department.

Following the above mentioned judgments, the question are decided accordingly.

In view of the above, the appeal is disposed of. No order as costs.

**(B. S. Verma, J)** **(M.M. Ghildiyal, J.)**

December 21, 2005
SKSharma